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August 2015

Deciphering the term “related parties” under the Companies Act, 2013 and Clause 49 of the listing agreement



Summary

This update aims to discuss the nuances of certain provisions of the Companies Act, 2013 (the 2013 Act) and the amended Clause 49 of the listing agreement. Subsequent to the enactment of the 2013 Act, a series of notifications/ amendments have been issued by the Ministry of Corporate Affairs (MCA) with respect to the definition of related party, etc. This update covers notifications/ amendments with respect to related party transactions in the 2013 Act, the Companies (Amendment) Act, 2015 (the Amendment Act) and Clause 49, as of 05 August 2015.

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Defining a related party

Section 2 (76) of the 2013 Act defines the term ‘related party’ as:

“related party”, with reference to a company, means -

- i. a director or his relative;
- ii. a key managerial personnel or his relative;
- iii. a firm, in which a director, manager or his relative is a partner;
- iv. a private company in which a director or manager or his relative is a member or director;
- v. a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;
- vi. any body corporate whose Board of Directors (Board), managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- viii. any company which is—
 - A. a holding, subsidiary or an associate company of such company; or
 - B. a subsidiary of a holding company to which it is
 - C. also a subsidiary;
- ix. such other person as may be prescribed

The 2013 Act, for the first time, has introduced a definition for related party, and has defined the term “relative”, to be read with the Companies (Specification of definitions details) Rules, 2014 (the Definition Rules 2014) as amended.

Unlike the amended Clause 49 of the listing agreement, which defines a related party using both Rule and principle-based approach, the 2013 Act has used only a Rule-based approach. The 2013 Act has defined the following parties, as listed below, under items 1 to 10.10 as a related party, in the context of a company:

1. A director
2. A manager
3. Key managerial personnel (KMP)
4. KMP of the holding company
5. Directors, other than independent directors, of the holding company
6. Holding company*
7. Subsidiary*
8. Associate *
9. Fellow subsidiary i.e. subsidiaries of the holding company*
10. Following persons related/connected with the directors/ manager/ KMP

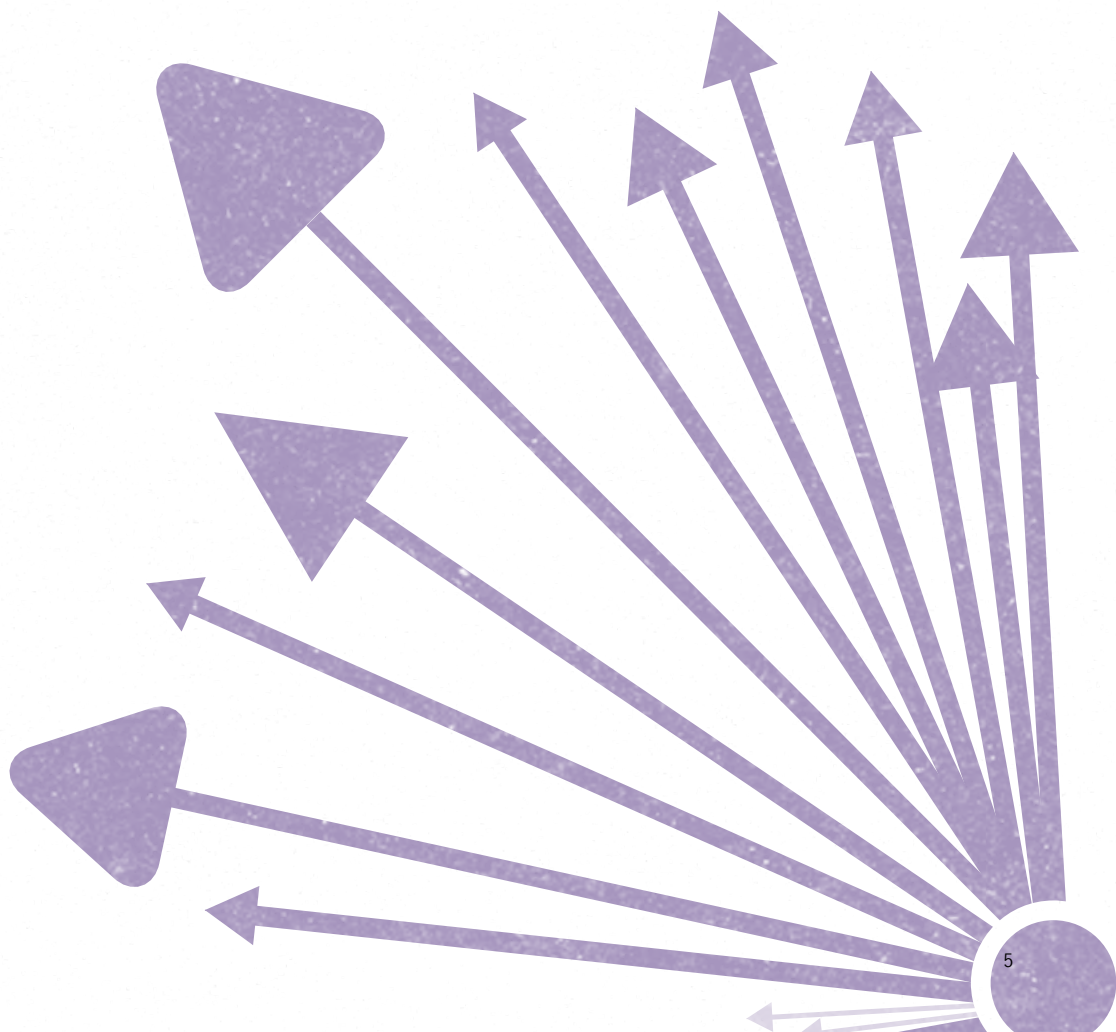
* For private companies the transactions between private company and any company which is a holding, subsidiary or an associate company of such company; or a subsidiary of a holding company to which it is also a subsidiary; shall not be treated as related party transactions.

Other parties connected with: <ul style="list-style-type: none"> • Director / Manager / KMP of a company; • KMP, other than the independent director of the holding company of a company 	Director of a company	Manager of a company	KMP of a company	KMP of a holding company	Other than the independent director of the holding company
10.1 Relative, as defined in note A below (read with Rule 4 of Definition Rules 2014)	✓	✓	✓	✓	✓
10.2 Other members of HUF, where the aforementioned is a member	✓	✓	✓	✓	✓
10.3 Firm(s) in which the aforesaid is a partner	✓	✓	✗	✗	✗
10.4 Firm(s) in which relatives of the aforesaid are partners	✓	✓	✗	✗	✗
10.5 Private company in which the aforesaid and his relative is a member	✓	✓	✗	✗	✗
10.6 Private company in which the aforesaid or his relative is a director	✓	✓	✗	✗	✗
10.7 Public limited company in which the aforesaid is a director. Such a person should also hold more than 2% of the paid-up share capital of such a public company	✓	✓	✗	✗	✗
10.8 Public limited company in which the aforesaid, along with his/ her relatives, is holding more than 2% of the paid up share capital	✓	✓	✗	✗	✗
10.9 A person on whose advice, directions or instructions, other than those provided in professional capacity, the aforesaid is accustomed to act	✓	✓	✗	✗	✗
10.10 A body/ corporate where the following members are accustomed to act in accordance with the advice, directions or instructions of the aforesaid, other than the ones offered in professional capacity:					
<ul style="list-style-type: none"> • Board 	✓	✓	✗	✗	✗
<ul style="list-style-type: none"> • Managing Director 	✓	✓	✗	✗	✗
<ul style="list-style-type: none"> • Manager 	✓	✓	✗	✗	✗

Notes:

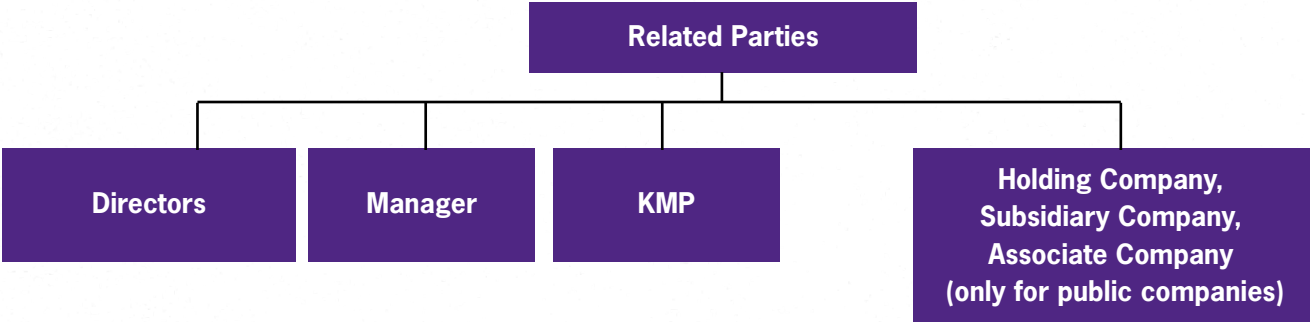
- A. For the purpose of point 10 in the list above, the term relative includes the following:
- spouse
 - mother and father, including step-father and step mother
 - son and step son
 - son's wife, including step-son's wife
 - daughter and daughter's husband
 - brother, including step-brother
 - sister, including step-sister
- B. For the purpose of related parties referred to in points 3, 4 and 10, the term KMP includes the following, which have not been covered above:
- Chief executive officer
 - Company secretary
 - Chief financial officer

The Securities and Exchange Board of India (the SEBI) vide circular no CIR/CFD/Policy Cell/2/2014 had revised the clause 49 of the listing agreement, and has used a very wide definition of related parties. However, subsequently, on 15 September 2014, vide its circular number CIR/CFD/Policy Cell/7/2014 further amended the earlier circular referred above. By virtue of the revised circular dated, the SEBI has aligned the definition of related parties in line with the provisions of the 2013 Act, and Accounting Standard 18 pertaining to related party disclosures as prescribed under the Companies (Accounting Standards) Rules, 2006 which are deemed to be the accounting standards under the 2013 Act until accounting standards are specified by the Central Government under Section 133.

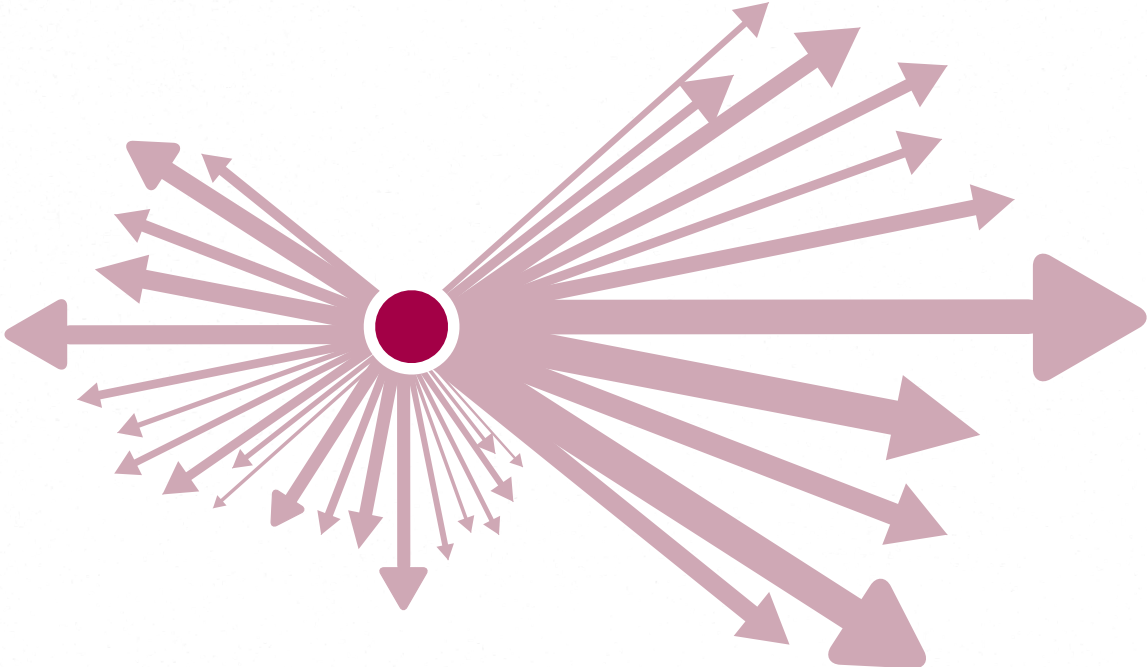


Snapshot of related parties

“Related Parties” as per the 2013 Act



- Related parties through Director/Manager**
- His relatives
 - Public companies in which he along with his relatives hold more than 2% of paid up capita besides being a director
 - Private Company in which he or his relative is a director or member
 - firms in which he or his relative is a partner
 - any Body corporate whose Board/Managing Director/Manager is accustomed to act on his advice
 - any person on whose advice he is accustomed to act
- Related parties through KMPs:**
- relatives of KMP
- Related parties through Holding company:**
- its director (other than an independent director) or KMP or his relative
 - its subsidiary company (only for public companies)



Scope of related party transactions

The 2013 Act

Section 188 of the 2013 Act deals with the provisions relating to related party transactions.

The following is a list of transactions covered under the 2013 Act, which require Board and/ or members' approval by way of an ordinary resolution, where such transactions are not in the ordinary course of business and/ or carried out at other than arm's length price:

1. Sale of goods, material, services and supply of goods, material
2. Purchase of goods, material and services
3. Sale or purchase of any kind of property (movable or immovable, tangible or intangible, financial or non-financial)
4. Disposing of any kind of property
5. Leasing of property of any kind (movable or immovable, tangible or intangible, financial or non-financial)
6. Appointment of any agent for purchase of goods, purchase of material and purchase of services
7. Appointment of any agent for purchase of property
8. Appointment of any agent for sale of goods material and services
9. Appointment of any agent for sale of property
10. Appointment of related party to any place of profit or to any office in the company
11. Appointment of related party to any place of profit or to any office in the subsidiary company
12. Appointment of related party to any place of profit or to any office in the associate company
13. Underwriting the subscription of any securities or derivatives

Amended Clause 49

The amended Clause 49 of the listing agreement has used a principle-based approach to define a related party transaction. According to the amended Clause 49, a related party transaction is a transaction, either with a cost or without it, for transfer of resources, services; and/ or obligations between a company and related party.

Further, an explanation has been added to define the word 'transaction', which states that related party transactions would include single or group of transactions in a contract.

The Amendment Act

The Amendment Act has introduced the provisions of omnibus approvals of audit committee for related party transactions on annual basis, similar to the amended Clause 49 of the listing agreement.

Further, the requirement of passing special resolution for approving certain related party transaction has been replaced with 'ordinary resolution'. With this amendment, certain related party transactions can now be approved through ordinary resolution instead of special resolution. Also, the requirement of obtaining approval of non-related shareholders¹ with respect to related party transactions between holding companies and wholly owned subsidiaries have now been exempted.

These provisions have come into force with effect from 29 May 2015; barring the provisions with respect to the omnibus approval of related party transactions by the audit committee, which have not been made effective so far.

¹ As per the recent MCA notification dated 5 June 2015, in case private companies, members of the company may vote on resolution to approve any contract or arrangement which may entered into by the company even if such member is a related party.

Essential conditions to be fulfilled for contracts and arrangements with related parties for transactions as listed in Part III above and covered under Section 188 of the 2013 Act and Rules made thereunder

Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014 (the Board Meeting Rules 2014) and other provisions of the 2013 Act require a company to

comply with the following in relation to the transactions specified in Part II above with related parties, as defined under the 2013 Act.

1. Board must evaluate the following indicative matters, in the Board meeting held for approving transactions with related parties:

Sl. No.	Particular
1	The name of the related party and nature of relationship
2	The nature of the contract or arrangement
3	The duration of the contract or arrangement
4	The particulars of the contract or arrangement
5	The material terms of the contract or arrangement including the value, if any
6	Advance paid or received for the contract or arrangement, if any
7	The manner of determining the pricing, both included as a part of contract and not considered as part of the contract
8	The manner of determining other commercial terms, both included as part of contract and not considered as part of the contract
9	All factors relevant to the contract should be considered, if not, the details of factors not considered with the rationale for not considering those factors
10	Any other information relevant or important for the Board to take a decision on the proposed transaction

Note: Directors interested in any contract or arrangement shall not be present in the meeting during discussion on the subject of the resolution relating to such contract or arrangement.²

² As per the recent MCA notification dated 5 June 2015, A director of a private company, who is an interested party in any proposed resolution/matter, can participate in a Board meeting after disclosure of his interest.

2. Pursuant to Rule 15 (3) of the Rules, contract or arrangement with related parties, **which are not in the ordinary course of the business and/ or which are carried out at other than arm's length**, shall be entered into only after obtaining prior approval of the members of the company by way of an ordinary resolution, in the following circumstances:

Applicable from 14 August 2014

- where the aggregate value of goods and material sold, purchased or supplied, **directly or through related party agents**, exceeds 10% of the company's turnover or Rs.100 crore, whichever is less;
- where the aggregate value of any kind of property (tangible/ intangible) sold or purchased or disposed of, **directly or through related party agents**, exceeds 10% of the company's net-worth or Rs.100 crore, whichever is less;
- where the aggregate value of leasing any kind of property (tangible/ intangible) exceeds 10% of the company's net-worth or exceeds 10% of the company's turnover or Rs.100 crore, whichever is less;
- where the aggregate value of services rendered or availed, **directly or through related party agents**, exceeds 10% of the company's turnover or Rs.50 crore, whichever is less;
- where the appointment of a related party to a place of profit or to any office in the company is at a monthly remuneration exceeding Rs.250,000;
- where the appointment of a related party to a place of profit or to any office of a subsidiary company is at a monthly remuneration exceeding Rs.250,000;
- where the appointment of a related party to a place of profit or to any office of an associate company is at a monthly remuneration exceeding Rs.250,000;
- where the aggregate of remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeds 1% of the net-worth.

Notes:

- i. The above limits shall apply for transactions to be entered into either individually or taken together with the previous transactions during a financial year
- ii. Net-worth and annual turnover shall be based on the audited financial statements of the preceding financial year;
- iii. In case of related party transactions between holding and **a wholly-owned subsidiary** meeting above thresholds, such wholly owned subsidiaries are not required to obtain approvals through ordinary resolution as long as such approvals have been obtained by the holding company;
- iv. Approval of audit committee (where applicable) is required and certain disclosures in the Board report are required to be made.

Essential conditions to be fulfilled for contracts and arrangements with related parties for transactions under Clause 49 of the listing agreement

The re-revised Clause 49 exempts all transactions from shareholders and audit committee approvals, irrespective of the nature and materiality of such transactions, where such transactions are between two government companies, or with a wholly owned subsidiary whose accounts are consolidated and placed before the shareholders at the general meeting. All other related party transactions require **prior approval** of the audit committee.

Further to the above, Clause 49 of the listing agreement has prescribed the following conditions to be fulfilled by a listed company in respect of transactions with related parties:

- Listed companies shall obtain approval of shareholders through special resolution in respect of all material related party transactions [**Please refer to FAQ No.5 for definition of material related party transactions**].
- In respect of related party transactions not exceeding Rs.1 crore, the audit committee of listed companies are authorised to grant an omnibus approval for transactions, subject to compliance with the following conditions:
 - Omnibus approval is granted only in respect of transactions which are repetitive in nature, and only if the audit committee is satisfied for the need of such approval in the interest of the company;
 - Such approval is granted in compliance with a detailed guidelines/criteria laid down by the audit committee.
- Omnibus approval shall specify the following details:
 - Name(s) of the related party;
 - Nature of transactions;
 - Period of transactions;
 - Maximum amount of transaction covered by such approval;
 - Indicative base price / current contracted price;
 - Formula for variation in the prices, if any;
 - Any other conditions, audit committee may deem fit in this regard.
- Audit committee shall review, at least once in a quarter, the details of transactions entered covered by omnibus approval.
- Omnibus approval shall be valid for a period not exceeding one year.
- The company shall formulate a policy on materiality of related party transactions and also on dealing with related party transactions.

Material related party transaction is a transaction with a related party to be entered individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the company as per the last audited financial statements of the company.
- All entities falling under the definition of related parties shall abstain from voting on a particular transaction, irrespective of whether the entity is a party to that transaction or not.
- The company shall disclose the policy on dealing with related party transactions on its website and a web link thereto shall be provided in the annual report.
- Disclosure in the corporate governance report quarterly regarding the details of all material transactions with the related parties.

Frequently asked questions

1. What are the key provisions of the 2013 Act and the listing agreement in connection with related party transactions?

Following is the list of important sections pertaining to ‘related party’ and ‘related party transactions’:

- Section 2(77) of the 2013 Act defining the term ‘relative’, to be read together with Rule 4 of the Definition Rules, 2014;
- Section 2(76) of the 2013 Act defining the term ‘related party’, to be read together with Rule 3 of the Definition Rules, 2014;
- Rule 15 of the Board Meeting Rules, 2014 ;
- Section 177(4)(iv) relating to the responsibility of audit committee in connection with transactions with related parties;
- Section 188 of the 2013 Act, which deals with the nature of related party transactions and provides operating guidelines in connection therewith;
- Part B Clause VII of the revised Clause 49 - in case of a listed company;
- Part A Clause VIII of the revised Clause 49 - in case of a listed company;
- Disclosures as required by Part I of Schedule III to the 2013 Act;
- Accounting Standards 18 or Indian Accounting Standards 24 (Ind AS) as referred to in Rule 7 of the Companies (Accounts) Rules 2014;
- Section 134(3)(h) regarding disclosures of transactions in the Board’s report.

Further, the 2013 Act has prescribed several other provisions relating to administration/ maintenance of records of related party and transactions with such parties, which a company shall comply with.

2. What is the effective date of applicability of the provisions/ sections/ Rules referred in 1 above?

Provisions of the 2013 Act and Rules framed thereunder in relation to related party and related party transactions are effectively applicable from 1 April 2014.

The amended Clause 49 of the listing agreement is now effective in a piecemeal basis. However, the applicability of provisions relating to related party transactions remains effective from 1 October 2014.

Provisions of the Amendment Act in relation to related party transactions are effective from 29 May 2015; however, the amendment with respect to omnibus approval of related party transactions by the audit committee is not effective as yet and still awaits notification of relevant Rules.

3. Whether the provisions pertaining to ‘related parties’ are applicable based on a financial year?

No, the provisions pertaining to ‘related party’ and ‘related party transactions’ are applicable for all contracts or arrangements with related parties entered on or after 1 April 2014, irrespective of the accounting year followed by the company.

4. Whether the contracts or arrangements of transactions with related parties entered on or before 1 April 2014 are also governed by the provisions of the 2013 Act?

No, the contracts or arrangements of transactions with related parties entered on or before 1 April 2014 shall continue to be governed by the provisions of the erstwhile Act till the expiry of original term of such contracts and other applicable provisions. However, modifications made to such contracts/ arrangements on or after 1 April 2014 shall be governed by the provisions of the 2013 Act. However, in the case of a listed company, for which it is expected that “material related party transactions” entered before 1 October 2014, will continue beyond 31 March 2015, the contracts or arrangements for material transactions shall be placed for approval before the shareholders in the first general meeting held after 1 October 2014.

5. What is the definition of material related party transactions under the amended Clause 49 of the listing agreement?

Under amended Clause 49 of the listing agreement, transactions with a related party is considered to be material, where value of such transactions (individually or taken together with previous transactions) during a financial year exceeds 10% of annual consolidated turnover of the company.

6. Whether provisions of the 2013 Act and relevant Rules framed thereunder are applicable to every company?

The provisions in connection with ‘related party’ and ‘related party transactions’ are applicable to public companies and public listed companies in its entirety, however as per recent MCA notification dated 5 June 2015, for private companies the aforesaid provisions are applicable with certain exceptions, which are as follows:

- The transactions between any company which is a holding, subsidiary or an associate company of such company; or a subsidiary of a holding company to which it is also a subsidiary; shall not be treated as related party transactions [Clause (viii) of section 2 (76)];
- Related party can vote on a resolution with respect to the transaction where he is related;
- A director of a private company, who is an interested party in any proposed resolution/matter, can participate in a Board meeting after disclosure of his interest.

7. Could you explain the broad operating procedures of the 2013 Act and Clause 49 of the listing agreement in connection with related party transactions?

The following is a broad operating procedure prescribed under the 2013 Act, relevant Rules framed thereunder and Clause 49 with regards to ‘related party transaction’:

Particulars		Procedure as prescribed under the 2013 Act
Unlisted companies	A Company having an audit committee, under Section 177 of the 2013 Act	Audit committee shall approve all: <ul style="list-style-type: none"> • related party transactions; and • subsequent modifications to the previously approved related party transactions. <p>However, as per the Amendment Act, audit committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to certain conditions. The effective date of the aforesaid provision has not been notified by MCA.</p>
	A Company operating only through Board	The Board must approve all the related party transactions, where such related party transactions are: <ul style="list-style-type: none"> • not in the ordinary course of its business; • in the ordinary course of its business, but carried at other than arm's length price.
	A Company having cases where transactions are covered by Rule 15(3) of Board Meeting Rules, 2014 (please see the limits mentioned above)	No contract or arrangement for a transaction with a related party shall be entered into without approval of: <ol style="list-style-type: none"> a. the Board/ Audit committee, as the case may be, and b. by members by way of a ordinary resolution <p>If such a contract or arrangement is for:</p> <ul style="list-style-type: none"> • transactions which are not in the ordinary course of the business; • transactions which are in the ordinary course of the business, but are carried at other than arm's length price.
Listed companies	Additional compliances - Material related party transactions	Every listed company must obtain an approval of its member by way of a special resolution in respect of material related party transactions. Such approval is mandatory even if the related party transactions are: <ul style="list-style-type: none"> • in the ordinary course of the business; and • carried at an arm's length price <p>Please refer to FAQ No 5 for the definition of material related party transactions.</p>

8. Whether the above procedures are applicable to loans to directors or loans to any other person in whom a director is interested?

No, Section 185 of the 2013 Act specifically deals with the provisions of loans to directors or loans to any other persons in whom the director is interested.

9. How to interpret the term “Ordinary Course of its Business” (OCB) as used in the context of ‘related party transaction’ under the 2013 Act?

The 2013 Act requires approval from the Board/ members for related party transactions which are not in the ordinary course of its business. However, the 2013 Act has not defined the term “OCB” and the MCA has refused to define the term. In the absence of an authoritative guidance, the said term should be interpreted to exclude transactions which are directly or indirectly connected to or necessary to conduct its business. For example, company ABC which is primarily engaged in the business of manufacturing and selling auto parts, and advancing loans to a related party which is in the business of providing information technology services, could be viewed as a transaction not in the OCB. Whereas, if the company ABC entered into a contract with related party to avail travel services for its employees/ staff, such services, being necessary for ABC’s ordinary activities, could be regarded as transaction in the OCB.

10. Is there any guidance available for the determination of arm’s length transaction?

The term “arm’s length transaction” has been defined as a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. Assessment of what is an arm’s length transaction could be extremely subjective, thus it may warrant an expert opinion.

11. Can a director who is interested in a contract or arrangement with a related party be present during the discussion at the Board meeting for approval of such transactions?

Pursuant to the provisions of Sub Rule 2 of Rule 15 of the Companies Board Meeting Rules, 2014, none of the interested directors shall be present during the course of discussions at the Board meeting except in case of a private company wherein the interested director can participate after disclosing his interest.

12. What are the provisions of the 2013 Act and Clause 49, in connection with voting rights of related party at the general meeting?

Under the 2013 Act, a related party, being a member of the company and also interested in a contract or arrangement for which an ordinary resolution is passed in the general meeting, shall not be entitled to vote on such ordinary resolution. Also, as per amended Clause 49, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not. However, the said restriction has been exempted for private companies under the 2013 Act. Therefore, member of the private company can vote on such ordinary resolution even if such member is a related party.

13. Can a related party transaction entered into without obtaining approval from the Board/ members be ratified subsequently?

Yes, contract or arrangement entered into without obtaining the consent of the Board or approval by an ordinary resolution in the general meeting, as the case may be, shall be ratified by the Board or members, by way of an ordinary resolution, within three months from the date of such contract or arrangement being entered.

14. What are the consequences of non-compliances with the provisions relating to subsequent ratification?

Nature of non-compliance	Consequences
Non-compliance with the provisions of the ratification	The contract or arrangement with the related party becomes voidable by the Board; and The Director(s) who has/ have authorised such transaction shall indemnify the company for the losses incurred on such un-authorised related party transactions.
Non-compliance with the provisions of Section 188	Directors or other employees who have authorised or entered into contract or arrangement in violation of the Section 188 shall be subject to: In case of a listed company (listed company as per 2013 Act means a company whose any security is listed on a recognised stock exchange in India) a. Imprisonment which may extend up to one year; or b. Fine of Rs.25,000 which may extend upto Rs.500,000 or c. Both a and b above In all other cases Fine of Rs.25,000 which may extend upto Rs.500,000.
Non-compliance with the provisions of listing conditions or delisting conditions or grounds	If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding Rs 25 crore .

15. Whether the thresholds in Sub-Rule 3 of Rule 15 the Board Meeting Rules, 2014 are applicable to individual transaction of sale or purchase or is applicable at an aggregate level?

The second amendment to the Board Meeting Rules 2014 includes an explanation clarifying that the limits listed under the Sub-Rule 3(i) to (iv), shall apply for transaction or transactions to be entered into either individually or taken together with all the previous transactions during a financial year.

Please refer to FAQ No 18 and 19 for listed companies.

16. How to compute annual turnover and net-worth for the purposes of Rule 15(3) and Clause 49?

For the purposes of Rule 15(3) and amended Clause 49 of the listing agreement, net-worth and the annual turnover shall be based on the audited financial statements of the preceding financial year.

17. Is there any conflicting requirement relating to passing of special resolution under the 2013 Act and under amended Clause 49??

The 2015 Act has recently relaxed the approval requirement from a special resolution to an ordinary resolution in case of related party transactions requiring shareholder's approval. Whereas under clause 49, for all material related party transactions special resolution is required to be obtained which could be obtained even subsequent to the date of contract or arrangement with the related party.

Therefore, now with the introduction of the 2015 Act, prior approval of shareholder's is required through ordinary resolution for certain specified transactions under the 2013 Act and special resolution is required under amended Clause 49 even subsequently and hence there is no conflicting requirements with respect to special resolution.

18. Whether the threshold limits for resolution under the amended Clause 49 and the 2013 Act are different from each other?

Yes. The threshold limits for resolution under the amended Clause 49 is different from that of the 2013 Act. Please refer to FAQ No 5 for limits as prescribed under the amended Clause 49 of the listing agreement.

19. Can there be a situation in which contracts or arrangements require resolution with related party only under amended listing agreement, and not under the 2013 Act?

Yes. Contracts or arrangements with related parties in the ordinary course of business and at arm's length prices are exempted from approval from shareholders and Board and requires only the approval of audit committee. Whereas Clause 49 requires material related party transactions to be approved by way of a special resolution in the members meeting, in-spite of such transactions being in the ordinary course of business and carried out at an arm's length price.

20. Whether the provisions relating to ordinary resolution under Section 188 are also applicable to transactions with wholly owned subsidiaries?

No. Wholly owned subsidiary companies are exempted from the requirement of passing an ordinary resolution, provided requirement of the ordinary resolutions have been complied by the holding company.

21. Whether the provisions of the Section 188 of the 2013 Act will apply to the transactions arising out of compromises, arrangements and amalgamations?

No. MCA has clarified that transactions arising out of compromises, arrangements and amalgamations dealt under specific provisions of the erstwhile Act/the 2013 Act, shall not attract the requirements of Section 188 of the 2013 Act.

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